

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

PETER JAMES BRUSH,	)	
	)	
Petitioner,	)	
	)	
vs.	)	NO. CIV-07-1196-HE
	)	
HASKELL HIGGINS, Warden,	)	
	)	
Respondent.	)	


**ORDER**

Petitioner Peter James Brush, a state prisoner appearing pro se, instituted this action pursuant to 28 U.S.C. § 2254 seeking habeas relief. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Doyle W. Argo, who has recommended that the petition be dismissed as untimely. The magistrate judge concluded that, even with statutory tolling, the petition was not filed within the one-year limitation period and the petitioner failed to demonstrate that he is entitled to equitably tolling. The petitioner has filed an objection, which the court has considered in conjunction with its de novo review.

The court concurs with Magistrate Judge Argo that the statutory year to file has expired with respect to the petitioner's claims, *see* 28 U.S.C. § 2244(d)(1)(A), and that, in the circumstances of this case, the limitations period is not subject to equitable tolling. Accordingly, the court adopts Magistrate Judge Argo's Report and Recommendation, and **dismisses** the petition for writ of habeas corpus as being untimely.

**IT IS SO ORDERED.**

Dated this 5<sup>th</sup> day of December, 2007.



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JOE HEATON  
UNITED STATES DISTRICT JUDGE